

# MINUTES OF THE TYNGSBOROUGH CONSERVATION COMMISSION MEETING

**April 11, 2006**

## **Present**

HJ: Henry Jungmann, Chairperson  
RS: Robert Sherburne, Vice Chair  
JZ: Jeanne Zarba

FZ: Frank Zarba  
CH: Cynthia Hanna

LC: Lori Capone, Director  
GC: Gloria Clancy, Clerk

## **Absent**

LG: Lucy Gertz      BL: Brian Logue, Associate Member

**7:00 Meeting opened** by Henry Jungmann, Chairperson. HJ introduced the board members and staff.

**7:02 Ann Tinnirella – End of Beech Tree Road:** (Continued from 8/23, 9/27, 10/25, 11/22, 12/13/05, 1/10, 3/14 & 3/28/06) Conduct a hearing pursuant to an Order of Judgement by the Superior Court, dated May 23, 2005, whereby this matter is remanded to the Conservation Commission for further hearing and determination of the ownership of the affected property. Present for this hearing were Ann Tinnirella, her attorney Colleen Gary, Michael Shyjan and his attorney Julie McNeil, and Town Counsel Charles Zaroulis. At the last meeting Atty. Julie McNeil asked for time to review Atty. Zaroulis' memoranda, dated \_\_\_\_, and HJ had requested that each Atty. put their comments in writing to the Commission within 4 to 5 days. These letters have been received. Atty. McNeil also filed a motion seeking clarification on the Superior Court's remand order. HJ announced that we are in receipt of a Clerk's Notice of action dated 4/6/06 on that motion. The motion has been denied. Atty. McNeil was the first to address the members. She reiterated her clients opposition and their initial complaint that the original NOI had the Town of Tyngsboro as the owner of the "end of Beech Tree Road", and that that has been proven to be false. Town Counsel Zaroulis stated that the remand order asks that the Commission decides the ownership status and then according to the decision of ownership they should decide whether to amend or reaffirm their original decision on the dock. There was discussion on the placement of the dock and the rights of the applicant to "pass and repass". Atty. Gary requested that the Commission take a stand on this tonight as it has been continued for a year now. HJ reminded the group that the Commission has no authority over or involvement with the issuance of Chapter 91 Licenses for docks; however DEP and Mass Waterways will not issue one without an active Order of Conditions from the Conservation Commission. It is a "catch 22" situation. The applicant has applied for a permit, and that satisfies that condition in the Commission's Order of Conditions.

**CH: Motion** to close this hearing.

**FZ: 2<sup>nd</sup>.**

**Unanimous (5-0)**

**CH: Motion** to agree that: 1.) the particular portion of Beech Tree Road is not owned by the Town of Tyngsborough; 2.) The applicant has by color of title the right to pass and re-pass over that portion of Beech Tree Road to access the beach area; 3.) The dock by prior Order of Conditions is to be set off Beech Tree Road; 4.) The Commission finds that the land where the dock is placed is within Lake Mascuppic, a Great Pond, thereby owned by the Commonwealth of Massachusetts; and 5.) Based on the above findings the Commission finds no reason to change their prior decision.

**JZ: 2<sup>nd</sup>.**

**Unanimous (5-0)**

**7:30 Aline Roy – 18 Bridle Path Way – Amendment to Order of Conditions:** (Map 27, Parcel 64) Installation of a septic system and retaining wall within the buffer zone. LC told the members that the



Minutes 4/11/06 continued.

applicant has not timely notified the abutter of tonight's hearing, but has sent notification that it will be heard on the 25<sup>th</sup>. She has requested that it be continued without discussion.

**JZ: Motion** to continue this hearing to 4/25/06 at 7:45 P.M.

**CH: 2<sup>nd</sup>.**

**Unanimous (5-0)**

#### **Other Business:**

- ❖ **Director Determination for Ursula Belley – 58 Willowdale Ave.** LC showed photos of an enormous downed tree on the applicant's waterfront area. Nichol's Tree Service plans to remove it in pieces with a crane. He will also use canola oil instead of chainsaw oil, to minimize any pollutants getting into the lake while cutting the pieces. The crane will stay on a driveway about 40' from the lake's shore.

**JZ: Motion** to approve the Director Determination for tree removal at 58 Willowdale Ave.

**CH: 2<sup>nd</sup>.**

**Unanimous (5-0)**

**7:40 (7:35) Town of Tyngsborough – Lake Mascuppic – NOI:** (Continued from 3/28/06) Implementation of an aquatic management program to control aquatic vegetation and algae utilizing various techniques including treatment with registered aquatic herbicides and algaecides. Rosemary Cashman, Tyngsborough Town Administrator, Edward Smith, Mascuppic Lake Association Chairperson, and member Bill Oliver were present for this hearing. At the last meeting the Commission requested that some research be done on the effects that the chemicals will have on the water and it's inhabitants. Also that someone do some testing before, during, and after treatments. Dominic Meringolo, Environmental Engineer at Aquatic Control Technology, Inc. has sent LC material safety data sheets on the three herbicides that will be used. Bill Oliver said that as a resident of the lake area (11 Roy Ave.) he has been monitoring certain things right along. He said he has a Master's Degree in chemistry; he is a chemistry teacher at Tyngsboro High School. He is willing to expand his testing and report findings to the Commission on such parameters as pH, temperature, ammonia, nitrates, phosphates and heavy metals via mass spectrometry. If there is an occurrence of high levels of heavy metals that requires more professional testing, he will make sure that it is performed also. HJ asked for comments from the members. There was a short question and answer period. HJ asked for abutter comments. The following people voiced concerns. Jim Melanson, 57 Mascuppic Trail, Tyngsboro, and Darlene Mattheson, 110 Mascuppic Trail. Most of the concerns had been discussed fully at the last meeting.

**CH: Motion** to close this hearing.

**RS: 2<sup>nd</sup>.**

**Unanimous (5-0)**

**CH: Motion** to issue an Order of Conditions for the Town of Tyngsborough to have Aquatic Control Technology, Inc. implement their plan for aquatic management and vegetation control, with monitoring and reporting as discussed.

**JZ: 2<sup>nd</sup>.**

**Unanimous (5-0)**

#### **Other Business:**

- ❖ LC showed the members a plan that Mr. Parlee of **Parlee Farms** is proposing for irrigation. Last year we gave him permission under a Director's Determination to place a pump on the bank of the river. He claims that was a temporary solution for an emergency drought situation. He would like to actually dig



Minutes 4/11/06 continued.

down and place a pump in the ground, seasonally, in that same area. He wants to know if he needs to file and what type of filing we want. It was agreed that a Notice of Intent be filed for a 5-year Maintenance Order of Conditions that can be extended for 5 years prior to its expiration.

- ❖ **Director Determination for Ted Flanders –2 Upton Drive.** LC showed photos of the area. Mr. Flanders wants to remove several large pine trees near the shoreline of Flints Pond. LC told them the trees are not dead or leaning towards his house, but that he wants to place a shed in that area in the future. The members decided that he should file at least a Request for Determination of Applicability (RDA).

**FZ: Motion** to deny the Directors Determination for Ted Flanders –2 Upton Drive. Inform Mr. Flanders that he should file at least an RDA for the cutting of the pine trees.

**JZ: 2<sup>nd</sup>.**

**Unanimous (5-0)**

- ❖ There was a brief discussion of upcoming decisions on open space at Sleepy Hollow subdivision and Overlook Drive.

**JZ: Motion** to accept the minutes of the Conservation Meeting of 2/28/06.

**RS: 2<sup>nd</sup>.**

**Unanimous (5-0)**

- ❖ LC pointed out that May 9<sup>th</sup> is Election Day. It is one of our regularly schedule meeting dates. We need to think whether to cancel that date or just move to a different meeting room. We can decide at the next meeting.
- ❖ The members signed Orders of Conditions for the culvert replacement on Middlesex Road, the Lake Mascuppic weed treatment, and Lot 12 Riverbend Road.

**JZ: Motion** to adjourn.

**RS: 2<sup>nd</sup>.**

**Unanimous (5-0).**

Meeting adjourned at 8:00 P.M.

Respectfully submitted by Gloria Clancy, Conservation Clerk